IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5520 OF 2004

Mrs.Priyanka Pramod Kulkarni)
Age : 40 Yrs, Occ. Housewife)
R/at : Vrundawan Apartment,)
'A' Wing, Room No.301/302,)
B.P.Road, Bhayander (East))
Dist.: Thane.)..Petitioner

Versus

1) Mrs.Mukta Pravin Ranjankar)
Age : Adult, R/at : Balkrishna)
Jyot, 1st Floor, B.P.Cross Road)
No.4, Bhayander (East),)
Dist.: Thane.)

2) Mrs.Uma Shyam Patil)
Age : Adult, Occ. : Housewife)
R/at : 101, Kalpita Apartment)
Navghar Road, Bhayander (East))
Dist. : Thane.)

3) Mr.Sameer Madhav Kurtakoti)
Age : Adult, Returning officer)
For Ward Nos.22, 23 & 24,)
Mira-Bhayander Municipal Corpn.)
Bhayander (West)-401 101,)
Dist.: Thane.).Respondents

Mr.K.K.Malpathak for the petitioner.

Mr.R.S.Datar for Respondent No.1.

None for Respondent No.2.

Mr.M.V.Limaye i/by Mr.R.S.Apte for Respondent No.3.

Coram : R.S.Mohite,J

Date : 3.12.2004.

Oral Judgment :-

. Rule. By consent of parties, rule made

returnable forthwith.

1. This is a Writ petition impugning the Judgment and order dated 22.4.2004 passed by the Civil Judge, Senior Division, Thane below Exhibit-26 in Election Petition No.53 of 2003.

2. Before adverting to the facts, I would like to note that by an order dated 6.7.2004 passed in the present petition, the notice was issued for final disposal. All the respondents are served and an affidavit of service has been filed. Respondent Nos.1 & 3 have engaged an Advocate and Respondent No.1 is the main contesting party. I have heard the Advocates for the petitioner and Respondent No.1 who are present. Respondent No.3 is a formal party.

3. The brief facts of the case are as follows :-

(a) On 13.5.2002 the State Election Commission declared election programme for Mira-Bhayendar Municipal Corporation.

(b) Between 10.7.2002 and 17.7.2002 nomination forms were issued. Respondent No.1 filed his nomination form but the same was rejected as it was incomplete in certain particulars.

(c) In July-2002, Respondent No.1 filed Election

Petition No.43/2002 challenging the rejection of her nomination papers. Admittedly, the petitioner was not a party to this Election petition.

(d) On 24.7.2002, Civil Judge, Senior Division, Thane passed a common order in Election Petition No.43/2002 and certain other election petitions allowing these petitions and directing a rectification in the nomination papers of respondent no.1.

(e) On 11.8.2002 the polls were held and on 13.8.2002 the votes were counted and Respondent No.1 was declared elected with 890 votes. The present petitioner was 2nd best as he had secured 876 votes. On 22.8.2002 the petitioner filed Election petition No.53/2002 in the court of Civil Judge, Senior Division Thane challenging the election of Respondent No.1.

(f) On 3.3.2004 Respondent No.1 filed an application at Exhibit-25 seeking the dismissal of the Election petition on the ground that the issues raised were barred on the principles of resjudicata.

(g) On 17.3.2004 the High court decided the Writ petition No.9692/2003 which had been filed by the present Respondent No.3 i.e. Returning officer against the Judgment and order dated 24.7.2002

passed inter alia in Election Petition No.43/2002. While deciding this Writ petition, this court observed that the Civil Judge, Senior Division was not justified in interfering with the election process on the basis of election petitions which were instituted even prior to the elections being held. It was observed that once the election process was under way and before declaration of the result, such petitions should not be entertained. However, in view of the fact that the proper election petition had been filed by the petitioner challenging the election of Respondent No.1, this court held that at this stage, it would not be proper to exercise its jurisdiction under Article-227 and that if any party was aggrieved by the declaration of election result, he or she could avail of such remidies as are open in law. On this limited ground the Writ petition was disposed off as rejected after making it clear that nothing contained in the order of the High court would be regarded as an adjudication of any issue that may be in question in a duly instituted election petition before the competent Court.

(h) On 22.4.2004 the impugned Judgment and order was passed by the Civil Judge, Senior Division, Thane.

4. On perusal of the order it is clear that neither the Writ petition No.9692/2003 nor the order passed

by this Court was before the Civil Judge, Senior Division, Thane. He dismissed the Election petition after observing that the question on merits relating to the rejection of nomination had earlier been decided in Election petition No.43/2002 and that the parties in both the petitions before him were the same. He observed that the said findings were not set aside by the appellate Court. Learned Advocate for the petitioner stated that principles of resjudicata would not be applicable as he was never a party to Election petition No.43/2002 or Writ petition No.9692/2003 which arose therefrom.

5. Learned Advocate for Respondent No.1 contended that though he was a party in Writ petition No.9692/2003 he was not heard as the Petition had became infructuous. Be that as it may, the trial court has proceeded on the wrong footing of parties being the same. The petitioner was not a party to the earlier Election petition at all.

6. In the circumstances, the principles of resjudicata incorporated in Section 11 of Code of Civil Procedure cannot be said to be attracted. It is further noted that this Court while deciding Writ petition No.9692/2003 and other Petitions categorically held that all issues were left open in duly instituted Election petition. This being the case, it cannot be said that the finding in the

earlier Election petition operates as resjudicata in the present petition.

7. In the circumstances, rule is made absolute in terms of prayer clause-(a). It is made clear that all questions relating to merits are kept open.

8. Learned Advocate for Respondent No.1 stated that this was a fit case for remanding the matter as the order of the High Court in the earlier Writ petition had not been produced. In my view, the point involved is very clear and no purpose would be served by remanding the matter.

(R.S.Mohite,J)